

PARTIES

4. Plaintiff is a resident of Amarillo, Potter County, Texas and, at times material worked or continues to work for James Green d/b/a Allstate Bail Bond Company, at its offices in Amarillo, Potter County, Texas. Plaintiff routinely worked hours in excess of forty (40) hours per work week, without receiving overtime compensation as required by federal law.

5. Defendant James Green d/b/a Allstate Bail Bond Company ("Defendant"), may be served by serving him personally at 219 S. Pierce Street, Amarillo, Texas 79101. James Green d/b/a Allstate Bail Bond Company maintains his principal place of business at 219 S. Pierce Street, Amarillo, Texas 79101.

6. At all relevant times, Defendant was and is legally responsible for all of the unlawful conduct, policies, practices, acts and omission as described in each and all of the foregoing paragraphs as the employer of Plaintiff.

7. At all times material to this action, Defendant was the "employer" of Plaintiff within the meaning of 29 U.S.C. § 203(d). At all times material to this action, Plaintiff was an "employee" of Defendant as defined by §203(e)(1) of the FLSA, and worked for Defendant within the territory of the United States within three (3) years preceding the filing of this lawsuit.

8. At all times material to this action, Defendant was an enterprise engaged in commerce or in the production of goods for commerce as defined by §203(s)(1) of the FLSA.

9. At all relevant times, the unlawful conduct against Plaintiff as alleged herein was actuated, in whole or in part, by a purpose to serve Defendant. The unlawful conduct alleged herein was reasonably foreseeable by Defendant and committed under actual or apparent authority by Defendant such that all of the alleged unlawful conduct is legally attributable to Defendant.

10. The overtime wage provisions set forth in §206 and §207 of the FLSA apply to Defendant. Plaintiff's job is not a position involving work that falls within any exception or exemption to 29 U.S.C. §213(a)(1).

FACTS

11. Plaintiff has been employed by Defendant at his Amarillo, Texas business location from May of 2010 up to and including the date of filing of this Complaint. James Green is the sole proprietor/owner and is the individual who controls Allstate Bail Bond Company, and who controls the day-to-day operations and makes decisions about payroll matters and rates of pay concerning the employees of Allstate Bail Bond Company.

12. Defendant, as well as his officers, agents, employees and representatives combined, conspired and acted through a course of practice and policy to avoid paying overtime to his hourly employees and to retaliate against and punish those employees who complained about such treatment.

13. During the time of Plaintiff's employment, Defendant failed to pay Plaintiff actual overtime wages for hours of work she performed in excess of 40 hours per week as required by the FLSA.

14. The failure to pay Plaintiff her lawful overtime wages under the FLSA included, but is not limited to, the following:

(i) requiring Plaintiff to be on-call several nights a week for 8-10 hours nightly while only paying Plaintiff a minimal "bonus" payment based on "bonds written" by Plaintiff instead of based on the actual time Plaintiff worked, including all on-call time, during each weekly pay period;

(ii) regularly requiring Plaintiff to work “off-the-clock”, most frequently after the end of the work day and failing to record, much less compensate, Plaintiff for any such hours worked during any work week; and

(iii) failing to pay Plaintiff for driving to and from out-of-town locations for duties related to her job, all of which said driving time constitutes compensable overtime pursuant to the FLSA.

15. The Defendant’s failure to pay Plaintiff her lawful wages required by the FLSA was willful. Despite his knowledge that time spent performing her daily activities for the benefit of Allstate Bail Bond Company, particularly those hours spent working over forty (40) hours per week, constituted work and is compensable time, the Defendant failed and refused to pay overtime.

16. Defendant acting in concert with his agents, representatives and employees at Allstate Bail Bond Company, have threatened Plaintiff with the closing of Allstate Bail Bond Company and the opening of a new bail bond company due to Plaintiff’s demand for payment of her overtime wages, coupled with the further threat that she should “look for a new job” as “she would not be one of the employees going over to the new location.” Additionally, since complaining about not being paid her overtime wages, McDonald’s work hours were drastically cut even as Green hired an additional employee whose duties substantially overlapped with Plaintiff’s. Finally, since complaining about not being paid her lawful overtime wages, Plaintiff has been the target of continued harassment, unsubstantiated “write-ups” and mistreatment at Allstate Bail Bond Company. All of these actions constitute unlawful retaliation.

CAUSES OF ACTION

COUNT I FLSA

Plaintiff Anita McDonald, for her Count I of this Complaint, inclusive of the foregoing, alleges and states:

17. Defendant's policy or practice of requiring Plaintiff to work forty (40) hours per week plus substantial additional on-call hours while only paying Plaintiff "bonuses" for bonds written instead of paying her for all hours worked in excess of 40 hours in violation of the FLSA. Defendant knew or should have known that his policy or practice violated the FLSA and he nonetheless willfully violated the FLSA.

18. As a result of Defendant's FLSA violations, Plaintiff has suffered actual damages by being denied overtime wages in accordance with § 206 and § 207 of the FLSA.

19. Because Defendant willfully violated the FLSA, a three-year statute of limitations applies to such violations, pursuant to 29 U.S.C. § 255. Defendant regularly told employees that no overtime was paid at Allstate Bail Bond Company and that its employees should be "happy with the bond bonuses he paid them." Defendant failed to record not only Plaintiff's overtime hours worked, but also failed to record Plaintiff's actual hours worked in any manner, including hours worked up to and including forty (40) hours per week. This practice is a *per se* violation of the FLSA.

20. Because of Defendant's unlawful acts, Plaintiff has been deprived of overtime compensation to be determined at trial, and is entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation pursuant to 29 U.S.C. § 216(b).

**COUNT II
RETALIATION**

In addition to the foregoing and as Count II of this Complaint, Plaintiff re-alleges herein as though repeated in full each allegation contained in paragraphs 1 through 20 above, inclusive and, further, Plaintiff alleges and states:

21. This Court has jurisdiction of Count II under Section 215(a)(3) of Title 29 U.S.C.
22. Defendant, acting in concert with his agents, representatives and employees at Allstate Bail Bond Company, has threatened to “close down Allstate Bail Bond Company” and open a new bail bond company due to Plaintiff’s demand for payment of her overtime wages, coupled with the further threat that she should “look for a new job” as “she would not be one of the employees going over to the new location.”
23. Additionally, since complaining about not being paid her overtime wages, Plaintiff’s work hours were drastically cut even and Defendant went as far as hiring an additional employee whose duties substantially overlapped with Plaintiff’s. As a consequence of Defendant’s retaliation, Plaintiff has earned substantially less in wages than she otherwise would have.
24. Finally, since complaining about not being paid her lawful overtime wages, Plaintiff has been the target of continued harassment, unsubstantiated “write-ups” and mistreatment at Allstate Bail Bond Company. This behavior by the Defendant clearly intended to serve as punishment against Plaintiff for exercising her rights under the FLSA and violates the FLSA.
25. Plaintiff has been damaged as a result of Defendant’s unlawful retaliation and is entitled to payment of wages lost and an additional equal amount as liquidated damages, punitive damages, and reasonable attorney fees and cost for which she herein sues.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays that this Court:

- a. Declare that the practices complained of herein are unlawful under the FLSA;
- b. Award Plaintiff her unpaid regular hourly wages for hours of work up to 40 hours per week and her unpaid overtime for all hours of work in excess of 40 hours per week;
- c. Award an equal amount of liquidated damages as allowed under the FLSA;
- d. Award attorney's fees and costs as provided by the FLSA;
- e. Award Plaintiff damages and costs for retaliation and outrageous conduct;
- f. Award penalties available under applicable law;
- g. Award pre and post judgment interest, as provided by law; and
- h. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

THE ZAVALA LAW FIRM
112 S.W. 8th Avenue, Suite 301H
Amarillo, Texas 79101
Tel: (806) 350-6794
Fax: (806) 350-6563

By: /s/ Felipe Zavala
Felipe Zavala
State Bar No. 24013796
Attorney for Anita McDonald

JURY DEMAND

Plaintiff herewith demands a trial by jury.

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Anita J. McDonald

DEFENDANTS

James Green d/b/a Allstate Bail Bond Company

(b) County of Residence of First Listed Plaintiff Potter
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Potter
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Felipe Zavala, The Zavala Law Firm

112 SW 8th Ave., Suite 301H, Amarillo, Texas 79101 806-350-6794

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 201 et seq.

Brief description of cause:

Alleged violations of FLSA --- failure to pay overtime wages claim

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

PENDING OR CLOSED:

(See instructions):

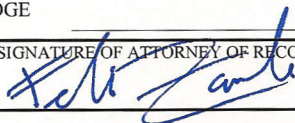
JUDGE

DOCKET NUMBER

DATE

02/14/2013

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE